Provisional

For participants only

18 October 2018

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International Law Commission
Seventieth session (second part)

Provisional summary record of the 3452nd meeting
Held at the Palais des Nations, Geneva, on Friday, 10 August 2018, at 10 a.m.

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Hassouna
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Peter
	Mr. Petrič
	Mr. Rajput
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Mr. Wako
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10.10 a.m.

Draft report of the Commission on the work of its seventieth session (*continued*)

Chapter XIII. Other decisions and conclusions of the Commission (*continued*) (A/CN.4/L.913)

The Chair, recalling that at the previous meeting it had been decided that the Secretariat should revise, in the light of suggestions made, the text of a new proposed paragraph for insertion between existing paragraphs 34 and 35, said that the proposed revised version read:

> "In response to an initiative by the African Union Commission on International Law (AUCIL), and in accordance with article 26 (1) of its statute, the Commission recommended that a meeting be held during the second part of its seventy-first session with AUCIL in the context of activities to commemorate the tenth anniversary of AUCIL. The Commission requests the Secretariat, in consultation with the Chair of the Commission and members of the Enlarged Bureau, to explore arrangements for the holding of such a meeting."

Mr. Rajput asked whether the preparations for the meeting would involve Commission members from all of the regional groups.

Mr. Nolte, supported by **Mr. Rajput**, said that, in the second sentence of the proposed new paragraph, the word "arrangements" should perhaps be replaced with "possibilities", since it had not yet been confirmed that such a meeting would in fact be held.

Mr. Jalloh said that using the word "possibilities" would dilute the language of the paragraph.

Mr. Huang said that he associated himself with the remarks made by Mr. Rajput and Mr. Nolte. While he welcomed the initiative, he wished to emphasize the fact that no such meeting had previously been held in the 70 years of the existence of the Commission. Before setting a precedent in that regard, the Commission must consider very carefully the implications of any such decision, which might open the door to similar requests from other bodies.

Mr. Nolte said that Mr. Huang's concern was met by the fact that the text clearly stated that the proposed meeting was intended to mark the occasion of the tenth anniversary of AUCIL and would not therefore set a precedent for regular engagement with such bodies. The use of the word "possibilities" instead of "arrangements" would make clear that the Commission was exploring whether, rather than how, to hold a meeting and that it had not yet committed itself unconditionally in that regard.

The Chair said that the text that had been drafted by the Secretariat simply welcomed the initiative without necessarily committing the Commission to anything beyond that. While the communication from AUCIL had used the term "joint meeting", the proposed paragraph spoke only of a "meeting", which might consist of a meeting of the Commission attended by AUCIL members as observers or something more formal. Such details could be fleshed out later; in the document under consideration it was necessary only to inform the General Assembly that the Commission welcomed the initiative.

He took it that the Commission wished to adopt the paragraph as amended by Mr. Nolte.

It was so decided.

The Chair, recalling that at the previous meeting he had suggested the formation of a small group to begin examining the question in detail, said that he wished to propose that the group should consist of, in addition to the Chair and the members of the Enlarged Bureau, as indicated in the adopted paragraph, all the members of the African Group and a representative of each of the other regional groups. He wished to propose Mr. Šturma from the Eastern European Group, Mr. Rajput from the Asia-Pacific Group, Mr. Ruda Santolaria

from the Group of Countries of Latin America and the Caribbean and Ms. Galvão Teles from the Group of Western European and other States.

Mr. Rajput said that he would prefer that the Asia-Pacific Group should elect its own representative.

It was so decided.

Paragraph 35

Paragraph 35 was adopted.

F. Representation at the seventy-third session of the General Assembly

Paragraph 36

Paragraph 36 was adopted.

G. International Law Seminar

Paragraphs 37 to 48

Paragraphs 37 to 48 were adopted.

Paragraph 49

Mr. Murase asked whether the reference to the General Assembly, at the end of the fourth sentence of paragraph 49, was correct.

The Chair said that "General Assembly" should be replaced with "Seminar".

Paragraph 49, as amended, was adopted.

Chapter XIII of the draft report as a whole, as amended, was adopted.

Chapter XI. Immunity of State officials from foreign criminal jurisdiction (A/CN.4/L.924)

The Chair invited the Commission to consider chapter XI of its draft report, as contained in document A/CN.4/L.924. He said that the chapter did not contain a summing-up by the Special Rapporteur since the debate on the topic of "Immunity of State officials from foreign criminal jurisdiction" was expected to continue at the Commission's seventy-first session.

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Paragraph 4

Sir Michael Wood said that he wished to place on record that the meaning of the term "the kinds of acts affected", which appeared in the third sentence of paragraph 4 and elsewhere in the document in reference to the acts affected by immunity, was unclear in English. While he did not wish to propose any textual changes to the document under consideration, the Commission should, when it came to formulate draft articles, give very careful consideration to that expression.

Mr. Nolte said that he agreed with Sir Michael Wood's comment. In the second sentence, "the procedural aspects" should be amended to read "procedural aspects".

Ms. Escobar Hernández (Special Rapporteur) said that she would take Sir Michael Wood's observation into account, in particular when presenting the draft articles. With regard to the proposal made by Mr. Nolte, the relevant chapters of her sixth report addressed the question of procedural aspects in general and from a methodological perspective. As such, an alternative solution could be to amend the beginning of the second sentence to read "She then started to address the procedural aspects".

Paragraph 4 was adopted with that amendment.

Paragraph 5

Paragraph 5 was adopted.

Paragraph 6

Mr. Park proposed the insertion between the first and second sentences of two new sentences, which were modelled on language contained in paragraph 193 of the Commission's report on its sixty-eighth session (A/71/10). The sentences would read: "At the time of its consideration, the report had only been available in the other five official languages of the United Nations for three days. Accordingly, the debate in the Commission was of a preliminary nature."

The Chair said that, in his view, it was not necessary or appropriate to include such language, since it would seem to be an implied criticism of the Commission, the Special Rapporteur and the conference management and translation services, when in fact great efforts had been made to issue the translations in a timely manner. While he would not object to a reference to the preliminary nature of the debate, it was not necessary to explain the reasons for it.

Mr. Nolte said that the description of the situation was less transparent than that provided in the Commission's report on its sixty-eighth session regarding a similar situation.

The Chair said that it was necessary only to refer to the preliminary nature of the debate and the fact that it would continue in the seventy-first session. The Sixth Committee would be able to draw the correct conclusions from that information.

Mr. Saboia said that he supported the Chair's position.

Mr. Ruda Santolaria said the current text was sufficient. Paragraph 27 highlighted the fact there had been limited time available for the debate at the current session and that consequently members who had spoken had stressed the preliminary character of their interventions.

Mr. Tladi said that it had been his intention to raise the same point as Mr. Ruda Santolaria.

Mr. Rajput said that the most important thing was to convey to the Sixth Committee that the Commission had not taken a definitive position on the topic. It could be sufficient to insert the words "was of a preliminary nature and" before "would be continued" in the second sentence of paragraph 6.

Mr. Park said that his proposal was intended to be a neutral reflection of the facts, without assigning blame. Paragraph 27 did not specify the reasons why the time available had been limited; it was necessary to reflect those reasons somewhere in the text.

The Chair said that including such information would mean treating the topic of immunity of State officials from foreign criminal jurisdiction differently from other topics, since nowhere in the report had the Commission stated that a lack of time had prevented the Drafting Committee from completing its work on three topics.

Mr. Jalloh said that he wished to associate himself with the comments of Mr. Saboia, Mr. Ruda Santolaria, Mr. Tladi and the Chair. In his view, paragraph 6 clearly explained what had happened at the session, particularly when read with paragraph 27. Since the Commission had striven to harmonize its treatment of topics, it would be unfortunate to introduce an inconsistency for one particular topic. If Mr. Park insisted on his proposal, he could live with the insertion of the word "preliminary" before "debate" in the second sentence.

Mr. Ruda Santolaria said that paragraph 27 clearly stated that the members who had spoken on the topic had reserved the right to comment further. An alternative solution might be to insert the words "in a preliminary manner" after "sixth report" in the first sentence of paragraph 6.

Mr. Murase said that, since paragraph 28 made reference to the fact that some members had regretted the late issuance of the Special Rapporteur's report, there was no need to refer to the issue in paragraph 6.

Mr. Petrič, supported by **Ms. Oral**, said that describing the debate as "preliminary" would be sufficient to reflect the factual reality of the situation.

Ms. Lehto said that she did not see the need for the word "preliminary" but that she could accept it as a compromise solution.

Mr. Cissé supported by **Mr. Vázquez-Bermúdez**, said that the addition in paragraph 6 of the word "preliminary" was unnecessary since it already appeared in paragraph 27.

Ms. Escobar Hernández (Special Rapporteur) said that, in her view, there was no need to modify the paragraph, which accurately reflected the status of the debate. In any event, it was not the debate that had been preliminary, but the interventions made by members, a point that was already conveyed in paragraph 27 of the document. The situation at the current session was not comparable to the one in which the Commission had found itself in 2016, when her fifth report (A/CN.4/701) had not been available to members in all the official languages of the United Nations. As noted by Mr. Murase, the fact that some members had expressed regret at the late issuance of her sixth report was captured in paragraph 28. In addition, the Commission's intention to continue and complete the debate on the report at its seventy-first session was stated in paragraphs 6, 27, 28 and 64.

The Chair said that the status of the debate could not have been more clearly specified, as explained by the Special Rapporteur.

Paragraph 6 was adopted.

1. Introduction by the Special Rapporteur of the sixth report

Paragraph 7

Ms. Escobar Hernández (Special Rapporteur) said that, in the light of comments submitted to her by some members, the final clause of the last sentence should be redrafted to read: "the consideration of which for some members of the Commission was a condition for the adoption of draft article 7".

Paragraph 7, as amended, was adopted.

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

Paragraph 10

Sir Michael Wood said that, in the first sentence, the word "against" should be replaced with "in".

Paragraph 10, as amended, was adopted.

Paragraphs 11 to 13

Paragraphs 11 to 13 were adopted.

Paragraph 14

Sir Michael Wood proposed the addition of the word "foreign" before "State officials".

Paragraph 14, as amended, was adopted.

Paragraphs 15 to 26

Paragraphs 15 to 26 were adopted.

2. Summary of the debate

Paragraph 27

Mr. Huang said that the concern voiced by Mr. Park in relation to paragraph 6 was reasonable and should be addressed somewhere. It was not true, as claimed in the first sentence, that there had been "limited time available to the Commission at the present session". The issue had been the scant time allocated to the consideration of the topic owing to the delayed issuance of the report. The first sentence should be amended accordingly.

The Chair said that it was not necessarily the allocation of time that had been problematic. After all, time was allocated on the basis of how much was available. The words "to the Commission" should be replaced with "for the consideration of the report", or words to that effect.

Paragraph 27 was adopted on that understanding.

(a) General comments

Paragraph 28

Paragraph 28 was adopted.

Paragraph 29

Mr. Nolte proposed that, in the third sentence, the word "to" should be inserted before "harmonize". In the last sentence, the word "nevertheless" could be deleted, since the last two sentences, which it appeared to connect, did not stand in contradiction or opposition to each other.

Ms. Escobar Hernández (Special Rapporteur) said that there was no equivalent of the word "nevertheless" in the Spanish text. She was happy to accept Mr. Nolte's proposals concerning the English text.

Paragraph 29, as amended, was adopted.

Paragraph 30

Mr. Nolte said that a new sentence should be inserted at the end of the paragraph to reflect an observation made by Mr. Murphy during the session. The sentence might read: "Other members pointed to the fact that rules of a treaty, for example article 27 of the Rome Statute, did not apply to States that are not parties to the Statute." As he could not recall Mr. Murphy's exact words, his proposal was subject to verification by the Secretariat.

The Chair said that, if Mr. Murphy had been alone in making that observation, the Commission should use the phrase "The view was also expressed that", or something along those lines.

Paragraph 30 was adopted on that understanding.

Paragraph 31

Sir Michael Wood said that, for the sake of clarity, the words "for some members" should be moved to the very beginning of the third sentence.

Paragraph 31, as amended, was adopted.

Paragraph 32

Paragraph 32 was adopted.

(b) Comments on the summary of the debate on draft article 7

Paragraph 33

Mr. Tladi proposed the insertion of a new second sentence to capture a comment that he had made in the plenary debate. The sentence would read: "Some members noted that the majority of States in the Sixth Committee supported draft article 7 as adopted by the Commission."

Sir Michael Wood said that, in the third sentence, the words "their preference" should be replaced with "the importance". He found the sentence proposed by Mr. Tladi very misleading indeed. The statement reflected therein was obviously wrong. Although it might have been made by one member, other members had expressed different views about what had happened in the Sixth Committee. He therefore hoped that Mr. Tladi would not insist on the inclusion of the sentence.

Mr. Nolte said that he was surprised by Mr. Tladi's proposal, which he also found misleading. If Mr. Tladi insisted on its incorporation, he would request that the Commission's consideration of the paragraph should be suspended until he had drafted a sentence to capture his own comments and those of Mr. Murphy, who had drawn a distinction between States that had expressed sympathy for draft article 7 and those that had made clear their dislike of it. While a slight majority of States might have expressed sympathy for the provision, the others had also criticized certain elements thereof.

Mr. Tladi said that he had been consistent about the importance of being faithful to what had transpired during the Commission's discussions in plenary. To reflect the balance of the debate and the points raised by Sir Michael Wood and Mr. Nolte, the following sentence could be inserted after the new sentence that he had proposed: "Some members noted that many States criticized various aspects of draft article 7."

Mr. Huang said that he would prefer not to change the paragraph, which already struck the right balance. If Mr. Tladi's proposal were accepted, it should be made clear in the paragraph that other members of the Commission had deemed his statement in plenary untrue. After all, of the 46 States that had given an opinion on draft article 7 in the Sixth Committee, 26 had expressed concern and some degree of dissatisfaction.

The Chair said that the purpose of the paragraph was to summarize not the debate that had taken place in the Sixth Committee, but the Commission's own discussions in plenary. Members were entitled to interpret the debate in the Sixth Committee in a particular way, and other members had the right to disagree.

Mr. Petrič said that the phrase "The view was also expressed that" could be used in the search for a compromise.

Paragraph 33 was left in abeyance.

(c) Comments on the procedural aspects dealt with in the sixth report

Paragraphs 34 to 36 were adopted.

Timing

Paragraphs 37 to 42

Paragraphs 37 to 42 were adopted.

Acts affected

Paragraphs 43 to 48

Paragraphs 43 to 48 were adopted.

Determination of immunity

Paragraph 49

Paragraph 49 was adopted.

Paragraph 50

Mr. Tladi proposed that, in the first sentence, the words "executive actions" should be replaced with "the executive".

Paragraph 50, as amended, was adopted.

Paragraphs 51 to 54

Paragraphs 51 to 54 were adopted.

(d) Comments on procedural safeguards and guarantees

Paragraphs 55 to 58

Paragraphs 55 to 58 were adopted.

Paragraph 59

Mr. Zagaynov said that a new sentence should be included at the end of the paragraph to reflect a statement that he had delivered in plenary. The sentence would read: "The view was also expressed that it would be hardly possible to solve the questions arising from draft article 7 through procedural safeguards and guarantees."

Paragraph 59, as amended, was adopted.

(e) Future work

Paragraph 60

Mr. Nolte said that not all members who had spoken had expressed the wish to complete the first reading of the draft articles during the Commission's seventy-first session. Consequently, the words "They expressed the wish" at the beginning of the second sentence should be replaced with "The wish was expressed".

Paragraph 60, as amended, was adopted.

Paragraph 61

Mr. Zagaynov said that, in the first sentence, the words "the agreed scope and" should be inserted after "incompatible with". In the last sentence, the word "also" should be used in place of "nevertheless".

Paragraph 61, as amended, was adopted.

Paragraph 62

Paragraph 62 was adopted.

Paragraph 63

Sir Michael Wood said that the paragraph was not at all clear and should be explained by the member or members concerned or deleted.

Ms. Escobar Hernández (Special Rapporteur) said that she would prefer to retain the paragraph, subject to verification by the Secretariat of the relevant statements.

The Chair said that he took it that the Commission agreed to adopt the paragraph on the understanding that the Secretariat would clarify it on the basis of the statements made.

It was so decided.

Paragraph 64

Paragraph 64 was adopted.

The Chair invited the Commission to resume its consideration of the paragraph that had been left in abeyance.

Paragraph 33

Mr. Nolte said that, if the sentence proposed by Mr. Tladi was included, it should be followed by a sentence that read: "Other members did not agree with this assessment and described the debate in the Sixth Committee as States being split practically evenly among themselves, and as evidencing different views about different aspects of draft article 7."

Mr. Huang said that he saw no need for the proposed additional sentences, which merely exposed the differences that existed within the Commission. Besides, Mr. Tladi's claim that the majority of States in the Sixth Committee had supported draft article 7 was inaccurate.

The Chair said that, while he understood the institutional concern voiced by Mr. Huang, the Commission's vibrancy lay precisely in the fact that its members thought differently and expressed their views freely.

Mr. Jalloh, supported by **Mr. Cissé**, said that he agreed with Mr. Huang. Bearing in mind the sensitivity of the topic and what the Commission was trying to accomplish, it would be advisable for the Commission not to focus on areas of difference of view; rather, it should focus on the many areas of agreement. Moreover, since only 46 States had spoken on draft article 7 in the Sixth Committee, it was difficult to draw conclusions about the views of States as a whole, given that there were a total of 193 Member States in the United Nations family.

Mr. Tladi said that he would defer to the wishes of the Special Rapporteur.

Ms. Escobar Hernández (Special Rapporteur) said that, although the proposals by Mr. Tladi and Mr. Nolte accurately reflected statements made during the Commission's debate on her sixth report, she would prefer to adopt the paragraph as amended by Sir Michael Wood, with no further changes, unless the Commission as a whole considered necessary the inclusion of those proposals. There was no need to highlight the divergence of opinion that existed with regard to the debate that had taken place in the Sixth Committee. States were already aware of it and could, in any case, consult the relevant summary records or digital recordings if they so wished.

Paragraph 33, as amended, was adopted.

Chapter XI of the draft report as a whole, as amended, was adopted.

Chapter XII. Commemoration of the seventieth anniversary of the Commission (A/CN.4/L.912)

The Chair invited the Commission to consider chapter XII of its draft report as contained in document A/CN.4/L.912.

A. Introduction

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Ms. Oral said that, in the interests of clarity, in footnote 3, the Chair of the Commission and the Chair of the Planning Group should be identified as Mr. Georg Nolte and Mr. Eduardo Valencia-Ospina, respectively.

Paragraph 2, as amended, was adopted.

Paragraph 3

Paragraph 3 was adopted.

B Seventieth anniversary session of the International Law Commission

Paragraphs 4 to 9

Paragraphs 4 to 9 were adopted.

Paragraph 10

Mr. Nolte proposed adding the words "and in the meantime also member of the Commission" after "Mr. Evgeny Zagaynov, Ministry of Foreign Affairs, Russian Federation" to make it clear that, although he had been invited as a panellist in his capacity as a legal adviser, there had been a change in the meantime. That was important in terms of highlighting the balance between Commission members and legal advisers on the panels.

Mr. Zagaynov said that, although it was for the Commission to decide, he had been invited as legal adviser of the Ministry of Foreign Affairs and had specifically pointed out before making his statement during the panel discussion that he was speaking in that capacity.

Mr. Nolte said that it was a sensitive issue and it was important to clarify that the Commission would not have invited Mr. Zagaynov to speak as a legal adviser if he had already been elected as a member at the time of the invitation. It might not be clear to the reader of the report in what capacity Mr. Zagaynov had participated.

The Chair said that, since the paragraph had been drafted skilfully and the panellists who had not spoken as members of the Commission had been identified by their official function, it did not seem necessary to make any further additions.

Paragraph 10 was adopted.

Paragraphs 11 to 15

Paragraphs 11 to 15 were adopted.

Paragraph 16

Mr. Nolte proposed replacing the word "should" before "adapt its working methods to the outcomes of its work" with "needed to further," as the Commission had already begun to adapt its working methods.

Paragraph 16, as amended, was adopted.

Paragraphs 17 to 20

Paragraphs 17 to 20 were adopted.

Paragraph 21

Mr. Peter pointed out that Ms. Gueldich was also a member of the African Union Commission on International Law.

The Chair said that, as she had been invited to speak in her capacity as an academic, the reference to the University of Carthage was sufficient.

Paragraph 21 was adopted.

Paragraph 22

Paragraph 22 was adopted.

Paragraph 23

Mr. Nolte said that, in the paragraph under consideration, Mr. Momtaz was described as a "former member of the Commission," whereas in paragraph 15 Mr. Comissário Afonso was described as the "Permanent Representative of Mozambique in Geneva". For the sake of consistency, perhaps the Secretariat could check Mr. Momtaz's position at the time of the invitation and add a description such as "adviser to the Government of Iran". As the remarks mentioned in the last sentence had been general in nature and not related specifically to that panel, perhaps that sentence should be moved to a separate paragraph, which would become new paragraph 24.

Paragraph 23, as amended, was adopted subject to its completion by the Secretariat.

Paragraphs 24 to 27

Paragraphs 24 to 27 were adopted.

Paragraph 28

Mr. Nolte proposed changing the order of the costs in the second sentence so that the most substantive item — "travel expenses (ticket and per diem) of the keynote speaker in New York and panellists invited to the commemoration in Geneva" — was listed first

Paragraph 28, as amended, was adopted.

Paragraph 29

Mr. Jalloh said that he and other members would be interested to know more about the publication covering the proceedings of the seventieth anniversary commemorative events.

The Chair said that the Secretariat would provide further details in due course.

Paragraph 29 was adopted.

Paragraph 30

Paragraph 30 was adopted.

Chapter XII as a whole, as amended, was adopted.

Chapter I, Introduction (A/CN.4/L.914)

The Chair invited the Commission to consider chapter I of its draft report, which was contained in document A/CN.4/L.914.

Introduction

Paragraph 1

Paragraph 1 was adopted.

A. Membership

Paragraph 2

Paragraph 2 was adopted.

B. Casual vacancy

Paragraph 3

Paragraph 3 was adopted.

C. Officers and the Enlarged Bureau

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

D. Drafting Committee

Paragraphs 7 and 8

Paragraphs 7 and 8 were adopted.

E. Working Groups

Paragraphs 9 to 11

Paragraphs 9 to 11 were adopted.

F. Secretariat

Paragraph 12

Paragraph 12 was adopted.

G. Agenda

Paragraph 13

Paragraph 13 was adopted.

Chapter I of the draft report as a whole was adopted.

Chapter II. Summary of the work of the Commission at its seventieth session (A/CN.4/L.915)

The Chair invited the Commission to consider chapter II of its draft report, which was contained in document A/CN.4/L.915.

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Mr. Nolte proposed deleting the words "as a result of its consideration of the topic at the present session" at the beginning of the first sentence, as they were implied, and adding the word "subsequently" between "the Commission" and "adopted on second reading," to bring it into line with paragraph 5.

Sir Michael Wood said that he would have proposed exactly the opposite change in paragraph 5. The formulation "as a result of its consideration of the topic at the present session" was fairly traditional and had been included in previous reports. The word "subsequently" was rather meaningless and he would have proposed deleting it in paragraph 5. However, he agreed that the two paragraphs should have parallel structures.

Mr. Tladi said that he agreed with Mr. Nolte. The Commission had not adopted the set of draft conclusions as a result of its consideration of the topic at the current session but as a result of its consideration over many years.

Sir Michael Wood said that he would accept the deletion of the formulation "a result of its consideration of the topic at the present session" but would rather not include the word "subsequently".

Paragraph 2, as amended, was adopted.

Paragraph 3

Paragraph 3 was adopted.

Paragraph 4

Sir Michael Wood said that the beginning of the sentence should be reordered to read: "The Commission also had before it an updated bibliography on the topic contained in an addendum to that report".

Paragraph 4, as amended, was adopted.

Paragraph 5

The Chair said that, as agreed, the word "subsequently" would be deleted from the first sentence.

Paragraph 5, as amended, was adopted.

Paragraphs 6 to 9

Paragraphs 6 to 9 were adopted.

Paragraph 10

Sir Michael Wood proposed deleting the word "respectively" in the third sentence.

Mr. Nolte said that the word "contained" in the second sentence should be replaced with "proposed".

Paragraph 10, as amended, was adopted.

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Paragraph 13

Mr. Nolte proposed inserting the word "further" before "analysing" in the first sentence, as the Special Rapporteur had already begun her analysis of procedural aspects.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted subject to a minor editorial amendment.

Paragraphs 15 to 18

Paragraphs 15 to 18 were adopted.

Chapter II of the draft report as a whole, as amended, was adopted.

Chapter III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.916)

The Chair invited the Commission to consider chapter III of its draft report, which was contained in document A/CN.4/L.916.

Paragraphs 1 and 2

Mr. Nolte said that, as paragraph 2 applied generally to all topics and paragraph 1 specifically to peremptory norms of general international law (*jus cogens*), he would propose inverting the order of the paragraphs. What was currently paragraph 1 would become paragraph 2 and should have its own heading, as was the case for the other topics mentioned in the chapter.

Sir Michael Wood said that he agreed entirely with Mr. Nolte's proposal. The beginning of new paragraph 1 could read: "The Commission would welcome any

information on the following issues". Concerning the deadline for submission of information, in his view 15 January 2019 was very close to the deadline for the submission of reports by Special Rapporteurs. He therefore wondered if an earlier date should be indicated, such as 15 December 2018.

Mr. Nolte said that, in order to allow States sufficient time to prepare their submissions, perhaps the deadline should be 31 December 2018.

Mr. Ouazzani Chahdi said that the date indicated in previous reports had always been 15 January and he did not see any reason to change it.

The Chair said that the Commission's practice in that regard had varied over the years. Bringing the deadline forward to 31 December 2018 would contribute to the timely submission of reports by Special Rapporteurs.

Paragraphs 1 and 2, as amended, were adopted, subject to their completion by the Secretariat.

A. Immunity of State officials from foreign criminal jurisdiction

Paragraph 3

Mr. Nolte said that at the very end of the last sentence the words "of State officials from foreign criminal jurisdiction" should be added after "immunity".

Paragraph 3, as amended, was adopted.

B. Protection of the environment in relation to armed conflicts

Paragraph 4

Paragraph 4 was adopted.

C. Succession of States in respect of State responsibility

Paragraph 5

Paragraph 5 was adopted.

Mr. Jalloh said that paragraph 33 of the report on the work of the Commission's sixty-ninth session (A/72/10) indicated that the Commission would welcome any proposals that States might wish to make concerning possible topics for inclusion in its long-term programme of work. For the sake of consistency, he proposed adding the text of that paragraph as a new section D in the chapter III.

Ms. Galvão Teles (Rapporteur) said that the standing invitation in paragraph 33 of the report on the sixty-ninth session had also been included in previous years.

Sir Michael Wood said that he supported Mr. Jalloh's proposal. He wondered whether the content of paragraph 32 of the report on the sixty-ninth session, which indicated the new topics that had been added to the long-term programme of work at that session and the criteria for the selection of topics, should also be copied *mutatis mutandis* to give context.

Ms. Galvão Teles (Rapporteur) said that the details of the topics added to the long-term programme of work had already been included in chapter XIII on other decisions and conclusions of the Commission and in the summary in chapter II. Perhaps the solution would be to add a paragraph recalling the criteria for the selection of topics and then the paragraph inviting States to submit their proposals.

Ms. Escobar Hernández said that, in terms of structure, the text of paragraph 33 from the previous report should come first, followed by the text of paragraph 32 concerning the criteria but without the reference to the topics added to the long-term programme of work.

Sir Michael Wood said that the logic of the approach adopted for the report on the previous session had been to indicate that new topics had been added to the long-term programme of work and to invite States to submit their views on those topics. That would be lost if the beginning of paragraph 32 were deleted. There had also been duplication of that point in a number of chapters in the previous report.

The Chair said that he took it the Commission wished to use the text of paragraphs 32 and 33 from the report of the sixty-ninth session, with the necessary adjustments in terms of the topics added to the long-term programme of work at the current session, in the same order.

It was so decided.

Chapter III of the draft report as a whole, as amended, was adopted.

The report of the International Law Commission as a whole, as amended, was adopted.

Chair's concluding remarks

The Chair said that the seventieth session had been one of the most productive in the Commission's history. The Commission was submitting to the General Assembly the draft conclusions on identification of customary international law and the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, which had been completed on second reading. It was also submitting to the General Assembly the draft guidelines on provisional application of treaties and the draft guidelines on protection of the atmosphere, which had been completed on first reading. The Commission had also advanced considerably in its work on three other topics, to such an extent that it would not be unreasonable to believe that first readings could be completed at the next session. It was also giving Member States in the Sixth Committee of the General Assembly plenty of material on which to comment in relation to the various other topics that the Commission had considered during the session. The Commission had decided to place the topic of general principles of law on its programme of work and two new topics on its long-term programme of work, namely universal criminal jurisdiction and sea-level rise in relation to international law.

The Commission could be proud of its productivity, its creativity and the continued collegial spirit in which it worked and overcame differences of view. It had successfully concluded the International Law Seminar, to which it attached great importance. He was grateful to his colleagues on the Bureau for their advice and guidance in managing the affairs of the Commission. He thanked the members of the Secretariat from the Codification Division for their competent assistance and continuous support and to the Legal Liaison Office in Geneva for their efficient assistance. He also thanked the précis-writers, interpreters, editors, conference officers, translators and other members of the conference services who had extended their assistance to the Commission on a daily basis.

Closure of the session

After the customary exchange of courtesies, **the Chair** declared the seventieth session closed.

The meeting rose at 1.10 p.m.